



PO Box 4301 Davis, California 95617 (530) 792-0763 info@commonfrequency.org

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

November 12, 2013

Re: Notice of Ex Parte Presentation
MM Docket No. 99-25 – Creation of a Low Power Radio Service
- Urgent request for a full 10-day extension to 2013 LPFM Filing Window

Dear Ms. Dortch:

On Thursday November 7, 2013, Clayton John Leander of Common Frequency sent an email message to Commissioner Clyburn and to Mark Stephens, Managing Director during the Commissioner's tenure as Acting Chair, regarding a joint letter co-signed by representatives of the Prometheus Radio Project, REC, Common Frequency, and Color of Change.org sent immediately after the Federal Shutdown on October 17, 2013. The purpose of the communication was to call attention to the outstanding request for an adjustment to the dates for the 2013 LPFM window due to setbacks affected by the Federal Shutdown and other accumulative factors, and urgently requesting a full 10-day extension to November 24th rather than the additional week initially sought by the aforementioned parties, and supported by Congressmen Lee Terry as well as Mike Doyle, co-sponsor of the Local Community Radio Act (LCRA).

On Friday November 8th, amended copies of the email were forwarded to P. Michele Ellison and to Sarah Whitesell, Commissioner Clyburn's Chief of Staff and Media Legal Advisor respectively, both of whom promptly replied via phone. Ms. Whitesell provided updated contact information for the staff of the new Chair; and Ms. Ellison acknowledged the importance of this issue, pledging to bring the communication to the attention of the Commissioner as well as to the incoming staff of new Commission Chairman Tom Wheeler.

The text of the email communication forward to Ms. Whitesell is being posted in FCC Docket 99-25 as an EX PARTE communication.

Respectfully Submitted,
/s/

Clayton J. Leander
President, Common Frequency

cc: Peter Doyle, Chief, Audio Division;
Chairman Tom Wheeler, Commissioner Mignon Clyburn
Commissioner Ajit Pai; Commissioner Jessica Rosenworcel

Sanjay Jolly Policy Director, Prometheus Radio Project
Michelle Eyre Bradley Founder, REC Networks
Rashad Robinson Executive Director, ColorOfChange.org
Todd Urick, Common Frequency

----- Original Message -----

From: C Leander <clay@commonfrequency.org>
Date: Fri, Nov 8, 2013
To: Sarah.Whitesell@fcc.gov <Sarah.Whitesell@fcc.gov>
Subject: Fwd: ATTN Commissioner Clyburn: Urgent follow up on requested adjustments

Dear Ms. Sarah Whitesell;

We wish to reach Commissioner Clyburn regarding urgent matters pertaining to the LPFM window deadline. According to the commissioner's website, you are still serving on her staff, and I am wondering if you may be part of the transition team.

In short, we are growing increasingly concerned that a recent joint communication that we at Common Frequency co-signed with Prometheus Radio Project, REC Networks and Color of Change and sent to Commissioner Clyburn immediately after the Federal Shutdown requesting an adjustment of one more week to the LPFM deadline has not only been left unaddressed, but is in danger of falling through the cracks during the transition of leadership to incoming Commission Chair Wheeler.

Now with other accumulative developments occurring before and since the Shutdown, we are afraid that the LPFM window will not be the true success we all - the Commission, LPFM Advocates and the Congress - have worked long and hard to achieve with the full level of diligence this initiative deserves.

If you are in any position to do so, we would be most appreciative if you could help in bringing this matter to the attention of Commissioner Clyburn, appropriate staff, and/or the transition team at your earliest possible convenience.

Please feel free to contact me directly ASAP for additional information.

Sincerely,

- Clayton J. Leander
President, Common Frequency
(415) 307-9510

----- Forwarded message -----

From: C Leander <clay@commonfrequency.org>
Date: Fri, Nov 8, 2013
Subject: ATTN Commissioner Clyburn: Urgent follow up on requested adjustments to 2013 Low Power FM filing window
To: "Mignon.Clyburn@fcc.gov" <Mignon.Clyburn@fcc.gov>
Cc: "Mark.Stephens@fcc.gov" <Mark.Stephens@fcc.gov>

(resend with corrected date & info. - cjl)

November 07, 2013

From: Clayton John Leander
President, Common Frequency

To: Commissioner Mignon Clyburn, FCC
Cc: Mark Stephens, Acting Managing Director

RE: Urgent follow up on requested adjustments to 2013 Low Power FM filing window

Dear Commissioner Clyburn;

On behalf of Common Frequency, I would like to first extend a word of thanks to you in gratitude for your leadership and track record as Acting Chair of the Commission, as well as your statement last December recognizing Common Frequency's work on the Low Power FM initiative alongside fellow community radio advocates Prometheus Radio and REC Networks. Beyond our advocacy and policy initiatives, we are all actively doing our part to help make the promise of media diversity and local ownership a reality for even more communities than ever.

However, I write you today with considerable urgency on outstanding LPFM-related matters that need to be mitigated, for which we are concerned does not fall through the cracks as the Commission undergoes its transition of leadership. In my efforts to find and reach your office I left a message for Managing Director Mark Stephens, who I've also included here.

On October 17th immediately following the disruptive Federal Shutdown, Common Frequency, Prometheus, REC and Color Of Change filed a letter to 99-25 Docket for the Low Powered FM service, jointly requesting an extension of the 2013 LPFM Window by at least the timeframe of cessation of operation, plus one week.

(see: <http://apps.fcc.gov/ecfs/comment/view?id=6017469583>)

However, in order to promote a more satisfactory follow-through of the massive collective work underway, and to help assure a more technically thorough completion of the application process, we believe now warrants a full 10-day extension to November 24th, which lands before the Thanksgiving holiday break.

Since we initially wrote to you as Acting Commission Chair, we respectfully request that you assign and convey a priority to these outstanding issues as part of your transitional activities with Chairman Wheeler and his team, that we may all achieve a timely and reasonable conclusion to the LPFM window with minimal difficulties as possible.

While I write only on behalf of CF today, I can add that all the parties are continually in contact with each other and sharing information, and all doing our best to work within the minimum adjusted filing window of November 14th; but are now dealing with several more issues and variables which have surfaced in addition to our original projections that necessitates updating our request.

Commissioner Clyburn, as I recently explained to Kamala Lane of the publication '*Communications Daily*' and other communication policy journalists, LPFM is more becoming of a 'consumer-level' initiative than the domain of professional and commercial broadcast entities that the Commission is more accustomed to dealing with, and who are far more experienced, resourced and aggressive in securing any and all spectrum possible. Most LPFM applicants do need more hands-on assistance and guidance.

Despite the Commission's laudable efforts of late to help make for a more user-friendly application process, the vast majority of community-based applicants we all deal with do not fully understand the how to prepare HAAT, ERP and TOWAIR calculations, Second-Adjacent Waivers, and other data for Engineering exhibits. In recognition of these realities, Common Frequency, REC and Prometheus continually strive to also make such information as understandable, available and accessible as possible, and are all assisting many qualified community organizations with a combination of sliding-scale, pro-bono and/or volunteer service offerings.

Yet through this process, we're also confirming something anticipated in CF's own filings referenced in the Sixth Report and Order released in December 2012: that we are now indeed in an "engineering crunch". All of our organizations are quite impacted at this very time; and we've gathered this is also the case at the Audio Division.

It has been challenging enough that the updated Rules were only released in a rather short time frame before this window, as opposed to other filing windows. Unfortunately, with subsequent developments this has been made only more difficult, of which the shutdown is but one factor. Below are but a few (I have asked our fellow colleagues & organizations to compile other examples, forthcoming), which need to be addressed:

- Consider the NCE window set for October 12, 2007, which was announced April 4, 2007, a total of 191 days.

By comparison the window for October 15, 2013 was announced June 17, 2013, only 120 days. As also mentioned, the LPFM rules were only released on a relatively short span before the current window.

- Concurrently, the settlement of the Translators pre-empted many community radio engineers from advising and getting started sooner on LPFM application exhibits. On this window we are all dealing with exponentially more channels and applicants, further compounding the consequential limitations on our collective capacities to offer application support. In reality there are only so many of us to go around, and many applicants DO need more expert engineering assistance.

- Despite the tone of confidence at the September 26th Open Meeting to move forward 'full speed ahead' with LPFM, no planned contingencies were discussed for either delaying or extending the window even with the imminent likelihood of the Federal Shutdown. Only after the resumption of US Government and Commission operations did we learn that the systems for the LPFM Window were automated, and that it was suddenly turned on.

- There were also changes made to RF calculations and worksheets, which were not released until after start of window. This change then required re-calculations for all applications and engineering exhibits (this is not an automated function, and we're all dealing with many of these).

- Another issue on 'shifting sands' concerns the status of the Translators: Although the Audio Division announced that translators filed after June 17th will not be protected, the current processing of translator applications during the active LPFM window is causing undue confusion for LPFM applicants, consultants and engineers alike, where translator input is not easy. Conversely, this not only seems unfair for translator applicants, who stand to lose their new construction permits if an LPFM application gets the channel, but represents a potential waste of Staff time.

- The shutdown also disadvantaged a number of currently licensed LPFM permitholders, who were suddenly cut without warning from the opportunity to file either to change locations and/or channels including 2nd Adjacent frequencies in advance of the LPFM window, but were not given a grace period or priority for processing.

- On top of all this, the Commission did not release the Sixth Reconsideration Order until October 17th. Many of us who are committed to the thorough study and due response to any and all regulatory and rulemaking functions are now also pressed with the difficulty of offering thorough responses these issues deserve in a timely manner. To be honest, it seems a bit forced and rushed.

In our respective communications with Commission Staff via phone, email and webinar questions, we are collectively gathering certain messages suggesting that any one of these issues should be easily dealt with before the current deadline. Perhaps this may be true for an individual applicant who understands all the rules and recent changes including to RF, minimum wattage and 2nd Adjacent calculations.

However, for those of us servicing dozens or even hundreds of applicants and exhibits, this is not really the case.

While we do not believe Staff at all intend to make matters further difficult, and that many of us are also bordering on fatigue that makes easy to share in sentiments for the LPFM window to be 'over with', the timing and manner of these ongoing and late-breaking developments have accumulated into the situation at hand, that we are left with few conclusions but to realize that Staff is limited in what they can actually resolve by way of administrative-level solutions; and that our request may necessitate a Commission-level policy action. In doing so I realize risks the amount of good-will we have individually and collectively built up with the Staff, but in the interest of achieving our long-sought mutual goals through a satisfactory conclusion, we see no other solution.

We hope conveying these issues will merit a full consideration by the respective transitional teams. To this end and as time permits, our colleagues are compiling their issues and assessments for the eventuality that we may need to present them to the Commissioners in another filing to the 99-25 Docket so to help further make the case for adjusting the LPFM filing window.

However, we would welcome any sort of summary action by Commissioners and/or Staff that will result in extending the window to November 24th, that we may overcome the aforementioned issues.

Thank you for your time and attention. Feel free to contact me directly for more information and examples.

Yours Truly,

- **Clayton J. Leander**
President, Common Frequency
Davis, California
(415) 307-9510
clay@commonfrequency.org